

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKĀURAU ROHE**

[2024] NZERA 560
3307980

BETWEEN	EOIN MILES Applicant
AND	CITADEL CAPITAL LIMITED Respondent

Member of Authority:	Eleanor Robinson
Representatives	Olivia Wensley, advocate for the Applicant Ginrick Credo and Samuel Moore, counsel for the Respondent
Submissions:	6 September 2024 from the Applicant None from the Respondent
Investigation Meeting	On the papers
Determination:	17 September 2024

DETERMINATION OF THE AUTHORITY

Application for compliance order

[1] The Applicant, Eoin Miles, has applied to the Authority under s 137 of the Employment Relations Act 2000 (the Act) for an order requiring the Respondent, Citadel Capital Limited (Citadel), to comply with the terms of the determinations given by the Authority: (Determination [2024] NZERA 285 and Determination [2024] NZERA 376).

[2] In the determinations which were issued on 14 May 2024 and 25 June 2024 respectively, I ordered that Citadel pay to Mr Miles the sums of \$15,000.00 as compensation and \$9,000 as costs pursuant to clause 15 of Schedule 2 of the Act.

[3] Following a case management conference held on 2 September 2024, it was directed, as agreed with the parties, that Mr Miles would file submissions on 6 September 2024, and Citadel would file submissions on 10 September 2024.

[4] Mr Miles submissions were received on 6 September 2024 as directed.

[5] On 11 September 2024, the day after its submissions were due, Mr Ginrick contacted the Authority and advised that Citadel would be lodging its submissions the following day, 12 September 2024.

[6] No submissions have been received and there has been no further communication from the Respondent.

[7] This matter is being determined on the papers by agreement with the parties.

Brief Background

[8] Following the issuing of the Authority's substantive determination, Citadel made an application on 11 June 2024 to the Employment Court to stay the Authority's determination. A judgment on that application for a stay has not been issued to date.

[9] Mr Miles, not having received payment of the amounts awarded to him by the Authority served a statutory demand dated 1 July 2024 on Citadel demanding payment of the sums awarded to him within 15 days of the date of the Statutory Demand being served on Citadel, by 4 March 2024.

[10] Mr Miles has not received payment of the sums awarded to him and is seeking a compliance order.

Non-publication Order

[11] Mr Miles applied for his name to be anonymised in this determination.

[12] The principle of open justice and the importance of that concept has been emphasised by the courts on many occasions, noting the judgments in *H v A Limited*, *XYZ v ABC*, *Crimson Consulting Ltd v Berry* and the Supreme Court decision in *Erceg v Erceg*.¹

[13] In the latter case, the Supreme Court noted that a high standard must be met before departing from the principle of open justice.² As a consequence there must be specific adverse consequences or other sound reasons to order non-publication.

[14] I do not consider there are sufficient grounds in this matter to support departing from the principle of open justice and anonymising Mr Miles' name in this determination.

¹ *H v A Ltd* [2014] ERNZ 38 at [78]; *XYZ v ABC* [2017]NZ EmpC 40; *Erceg v Erceg* [2016] NZSC 135

² *Erceg n1 above at [63] and [69]*

Compliance Order

[15] The compliance application arises from determinations of the Authority. The amounts ordered to be paid are expected by the Authority to be paid, either by the date specified in the determination, or within a reasonable timeframe. It has been four months (Determination NZERA 285) and almost three months (Determination NZERA 376) since the amounts were ordered to be paid. That is not a reasonable length of time.

[16] Pursuant to s 180 of the Act, an election by a party to challenge a determination of the Authority does not act as a stay on the determination, unless so ordered by the Authority or the Court. No stay order applies in this matter.

[17] I am satisfied that Citadel has not complied with the terms of Determination [2024] NZERA 285 and Determination [2024] NZERA 376.

[18] It is just in the circumstances for an order to be made requiring Citadel to comply with the Authority's determinations.

Orders

[19] **Citadel is ordered to pay Mr Miles the sum of \$15,000.00 in respect of compensation pursuant to Determination [2024] NZERA 285.**

[20] **Citadel is ordered to pay Mr Miles the sum of \$9,000.00, and the sum of \$71.55 in respect of costs and the Authority filing fee pursuant to Determination [2024] NZERA 376).**

[21] **Citadel is ordered to pay interest on the sums due in accordance with Schedule 2 of the Interest on Money Claims Act 2016. A calculator to assist in the calculation of interest is available on the Ministry of Justice website.**

[22] **Citadel is ordered to pay the sum of \$750.00 to Mr Miles as a contribution to his legal costs incurred in this application for the Compliance Order.**

[23] **Citadel is ordered to comply as ordered above within 28 days of service of this determination.**

Eleanor Robinson
Member of the Employment Relations Authority